

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

MAY 03 2010

Stephan Harris, Clerk  
Cheyenne

James E. Gigax, W.S.B. Reg. 5-1913  
Bloom Murr & Accomazzo, P.C.  
Attorneys at Law  
410 17th Street, Suite 2400  
Denver, CO 80202-4402  
Telephone: (303) 534-2277  
Facsimile: (303) 534-1313  
Email: [jgigax@bmalaw.com](mailto:jgigax@bmalaw.com)

W. Joseph Lapham II  
Bendinelli Law Office, P.C.  
9035 Wadsworth Pkwy, Suite 4000  
Westminster, CO 80021  
Phone Number: (303) 940-9900  
Facsimile: (303) 940-9933  
Email: [mfb@colawfirm.com](mailto:mfb@colawfirm.com)  
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

FLOYD H. MILLER, an individual,  
  
Plaintiff,

vs.

ROLLING HILLS TRUCKING, INC., and  
a corporation, JOSEPH LYNN SCHOLZ,  
  
Defendants

)  
)  
)  
) Civil Action No.

**10CV0085** ->

COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, Floyd H. Miller, in his individual capacity, by  
and through his undersigned counsel, James E. Gigax, W.S.B. Reg. 5-1913 of  
Bloom Murr & Accomazzo, P.C., and W. Joseph Lapham II of Bendinelli Law

Office, P.C., and for his Complaint and Jury Demand against the above-named Defendants states as follows:

**JURISDICTION AND VENUE**

1. Plaintiff Floyd H. Miller (hereinafter "Plaintiff") was, at all times mentioned herein, a resident and citizen of the State of Colorado.
2. Plaintiff brings this action on his own behalf individually.
3. Plaintiff is informed and alleges that Defendant Joseph Lynn Scholz (hereinafter "Scholz") is currently a resident and citizen of the State of Wyoming or otherwise a state other than Colorado. .
4. Plaintiff is informed and alleges that Defendant Rolling Rock Trucking, Inc. is a corporation the principal place of business of which is in Wyoming or otherwise a state other than Colorado.
5. The acts and circumstances giving rise to Plaintiff's claims for relief arose in and occurred in the County of Laramie, State of Wyoming.
6. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$ 75,000.00.
7. The Court is vested with subject jurisdiction over the action pursuant to 28 U.S.C. § 1332, because there is complete diversity between the Plaintiff and the Defendants for purposes of diversity jurisdiction, insofar as all parties

plaintiff are citizens of Colorado, and all parties defendant are citizens of Wyoming or otherwise of states other than Colorado. 28 U.S.C. §1332..

8. Venue is properly laid in the United States District Court for the District of Wyoming under 28 U.S.C. § 1391.

### **COMMON ALLEGATIONS OF FACT**

9. Plaintiff incorporates by reference as if set forth fully herein all allegations contained in Paragraphs 1 through 8 above as if set forth *verbatim*.

10. On May 3, 2006, Defendant Scholz, at all times relevant hereto, was acting in the course of his employment by or agency with Defendant Rolling Hills Trucking, Inc. ("Rolling Hills")

11. On May 3, 2006, Mr. Scholz was driving a tractor-trailer combination (hereinafter "tractor-trailer") owned, leased or otherwise controlled by Rolling Hills on southbound Interstate 25 in the County of Laramie, State of Wyoming, near the 27.50 Mile Marker.

12. At that time and place, Defendant Scholz lost control of the tractor-trailer, and the tractor-trailer entered the median and rolled.

13. Upon the rolling of such tractor-trailer, certain of the tractor-trailer's cargo or other contents or debris from such tractor-trailer were ejected or otherwise was separated from such tractor-trailer.

14. Such ejected cargo or debris came to rest upon one or more northbound lanes of Interstate I-25.

15. At that time and place, Defendant Scholz failed to ignite flares or otherwise display warning devices to warn or otherwise advise persons operating vehicles on northbound I-25 concerning his disabled tractor-trailer or concerning the cargo or other ejected debris lying in the northbound lane or lanes of northbouth I-25.

16. At that time, Plaintiff was traveling northbound on Interstate 25 near Mile Marker 27.50 in the County of Laramie, State of Wyoming, south of and in the direction of the ejected cargo or debris which was deposited upon northbound I-25 by Mr. Scholz.

17. At that time and place, Plaintiff was reasonably and prudently operating a 2005 Sterling tractor-trailer combination (hereinafter "Sterling tractor-trailer"), License Plate Number YAEY243, VIN QFWBA2DE45AV35321, owned by Conway Western Express, northbound on I-25, in the direction of the ejected cargo or debris which was deposited upon northbound I-25 by Mr. Scholz.

18. At that time and place, the Sterling tractor-trailer operated by Plaintiff collided with certain of the ejected cargo or debris which was deposited upon northbound I-25 by Mr. Scholz.

19. Upon colliding with such cargo or debris, the Sterling tractor-trailer entered the median and came to a stop in the median.

20. Such collision with the aforementioned cargo or debris proximately caused the Plaintiff to incur personal injuries and other damages.

21. Defendant Scholz, by negligently, carelessly, and/or recklessly (i) losing control of the Sterling tractor-trailer, and, independently, (ii) failing to warn of his disabled truck, or of the aforementioned ejected cargo or debris lying in the northbound lane of I-25 in which Plaintiff was driving, caused the collision with such cargo or debris.

22. At all times herein mentioned, Plaintiff was not comparatively negligent in causing the collision or his own injuries, damages, and losses.

23. At all times relevant hereto, Plaintiff was utilizing three-point lap/shoulder safety restraints.

24. Upon information and belief, Defendant Rolling Hills owned or leased and otherwise controlled the Sterling tractor-trailer that Defendant Scholz was operating at the time and place of the May 3, 2006 incident.

25. As a direct and proximate result of the May 3, 2006 collision, Plaintiff sustained in the past, and will continue to suffer in the future, both economic and non-economic injuries, losses, and damages, as well as physical impairment, and/or disfigurement and disability.

**FIRST CLAIM FOR RELIEF**  
**(Negligence against Defendant Scholz)**

26. Plaintiff incorporates by reference as if set forth fully herein all allegations contained in Paragraphs 1 through 25 above as if set forth *verbatim*.

27. Defendant Scholz owed a duty to Plaintiff and other motorists potentially affected by Mr. Scholz' driving to exercise reasonable care in the operation of the Sterling tractor-trailer.

28. Defendant Scholz was negligent, careless and reckless, and displayed a careless and willful indifference to the safety of others and violated duties owed to Plaintiff in the following, but not exclusive, respects:

- a. driving too fast for the conditions then and there existing;  
and/or
- b. failing to keep his vehicle under control; and/or
- c. careless and negligent operation of his vehicle; and/or
- d. failing to maintain a proper lookout; and/or
- e. failing to warn of his disabled truck; and/or
- f. failing to warn of the ejected cargo or debris in the roadway.

29. As a direct, foreseeable, and proximate result of the negligence, carelessness, and recklessness of Defendant Scholz, Plaintiff suffered and will suffer, including, but not limited to, the following injuries, losses, and damages:

- a. Temporary and permanent physical injuries, disabilities, and impairments;
- b. Knee injuries;
- c. Shoulder injuries;
- d. Economic losses
- e. Non-economic damages; and
- f. Physical impairment, disability and/or disfigurement

**SECOND CLAIM FOR RELIEF**  
**(Negligence *per se* against Defendant Scholz)**

30. Plaintiff incorporates by reference as if set forth fully herein all allegations contained in Paragraphs 1 through 29 above as if set forth *verbatim*.

31. Defendant Scholz, by operating and/or driving the Sterling tractor-trailer in a negligent, careless, and reckless manner and causing the Sterling tractor-trailer to enter the median and to deposit debris upon northbound I-25 and the ensuing collision, violated the Wyoming Uniform Act Regulating Traffic on Highways, and other federal, state and local laws, rules, regulations, executive orders and other standards of conduct having the force and effect of law, and was thus negligent *per se*.

32. As a direct and proximate result of the negligence *per se* of Defendant Scholz, Plaintiff incurred the damages alleged above.

33. As a direct and proximate result of the negligence *per se* of Defendant Scholz, Plaintiff suffered in the past, and will continue to suffer in the future, non-economic damages including, but not limited to, mental and physical pain and suffering, loss of enjoyment of life, inconvenience, emotional stress, and impairment of quality of life.

34. As a direct and proximate result of the negligence *per se* of Defendant Scholz, Plaintiff suffered, and will continue to suffer damages in the future.

**THIRD CLAIM FOR RELIEF**  
**(Vicarious Liability/*Respondeat Superior* against Defendant Rolling Hills)**

35. Plaintiff incorporates by reference as if set forth fully herein all allegations contained in Paragraphs 1 through 34 above as if set forth *verbatim*.

36. On May 3, 2006, at the time and place of the subject incident, Defendant Scholz was an agent, employee, and/or servant of Defendant Rolling Hills.

37. On May 3, 2006, at the time and place of the subject incident, Defendant Scholz was acting within the scope of his agency or employment with Defendant Rolling Hills.

38. Defendant Rolling Hills owed duties of reasonable care to Plaintiff and is liable for its independent acts and omissions and is also vicariously liable for the acts and omissions of its servants, employees and agents.



39. At the time and place of the events described herein, the Defendants breached and violated their duties of due care.

41. Such breaches and violations were the direct and proximate cause of damages more particularly alleged in this complaint. The acts and omissions constituting such violations include, but are not limited to:

- a. failure to use reasonable care under the circumstances in trucking operations;
- b. failure to use reasonable care in warning of and securing the ejected cargo and debris and of warning of the disabled Sterling tractor-trailer; and
- c. failure to use reasonable care in hiring, retaining, training and/or supervising their employees, servants and agents.

42. As a direct and proximate result of the negligent acts and omissions of the Defendants as alleged in this Complaint, Plaintiff sustained personal injuries and economic losses and damages

43. Therefore, Defendant Rolling Hills is vicariously liable for the negligence and negligence *per se* of Defendant Scholz, and is responsible for all damages and losses described herein.

44. Plaintiff reserves the right, if demonstrated by the evidence, to assert a claim for punitive damages as is fair and right.

WHEREFORE, Plaintiff prays that the Court enter judgment against the Defendants, jointly and severally, in an amount of damages supported by the allegations of this Complaint, as follows:

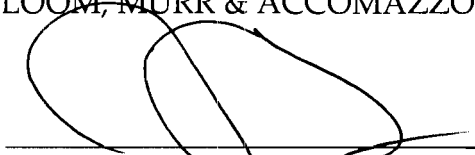
1. Judgment against the defendants for general damages in an amount consistent with the allegations contained herein and to be proven at trial;
2. Judgment against the Defendants for special damages in an amount consistent with the allegations contained herein and to be proven at trial; and
3. Judgment for costs, interest, and for such other and further relief that the Court deems just and equitable, including any exemplary or punitive damages permitted to be presented by the Court, under the evidence.

**JURY DEMAND**

Plaintiff respectfully demands trial by a civil jury of six (6) persons.

DATED this 31 day of May, 2010.

BLOOM, MURR & ACCOMAZZO, P.C.



---

James E. Gigax, W.S.B. 5-1913  
410 17th Street, Suite 2400  
Denver, Colorado 80202-4402  
Telephone: (303) 534-2277  
Facsimile: (303) 534-1313  
[jgigax@bmalaw.com](mailto:jgigax@bmalaw.com)

W. Joseph Lapham II  
Bendinelli Law Office, P.C.  
9035 Wadsworth Pkwy, Suite 4000  
Westminster, CO 80021  
Phone Number: (303) 940-9900  
Facsimile: (303) 940-9933

Attorneys for Plaintiffs